

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA

VS.

CHARLTON ARTHUR FITZJARRALD (6)

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CASE NO. 4:13CR187
APPEAL NO. 17-40760

MEMORANDUM OPINION AND ORDER

On June 16, 2017, the Court entered the Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. §3582(c)(2), denying Defendant's motion (Dkt. #243). The final day for filing a timely notice of appeal was June 30, 2017. Defendant filed his notice of appeal out of time on July 13, 2017.

Rule 4(b)(1) of the Federal Rules of Appellate Procedure affords a criminal defendant fourteen (14) days in which to file a notice of appeal. Pursuant to Rule 4(b)(4) of the Federal Rules of Appellate Procedure, a district court may grant an additional thirty (30) days in which to file a notice of appeal upon a finding of excusable neglect or good cause. Since Defendant filed his notice of appeal within the additional thirty (30) day period, the Fifth Circuit remanded the case to this court on November 27, 2017 for a determination of whether the untimely filing of the notice of appeal was due to excusable neglect or good cause. This Court subsequently entered an Order on November 29, 2017 directing Defendant to file an affidavit with the Court by December 28, 2017, explaining whether the untimely filing of his notice of appeal was due to excusable neglect or good cause.

In the Court's November 29, 2017 Order, Defendant was ordered to file an affidavit with the Court by December 28, 2017, explaining whether the untimely filing of his notice of appeal was due

to excusable neglect or good cause. Defendant has failed to file an affidavit with the Court as ordered. Defendant, therefore, has not offered any explanation as to whether the untimely filing of his notice of appeal was due to excusable neglect or good cause. In light of the foregoing, the Court finds that Defendant's untimely filing of his notice of appeal was not due to excusable neglect or good cause.

The Clerk is **ORDERED** to forward a copy of this memorandum to the Court of Appeals and to the parties in this lawsuit.

SIGNED this 13th day of February, 2018.

A handwritten signature in cursive script, reading "Amos Mazzant", written in black ink over a horizontal line.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE